IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1383 OF 2005

Damu Zipru Patil (Bhamre) ..Appellant.

Vs.

Shamrao Chindhu Battashe ..Respondent.

....

Mr.R.G.Ketkar for the Appellant.

CORAM : DR.D.Y.CHANDRACHUD, J.

2nd December, 2005.

P.C. :

There is a concurrent finding of both the Courts below. The finding is that there was a surrender of tenancy prior to 1st April, 1957 which is the Tillers day. A copy of the order of the Tahsildar in Tenancy Case 78 of 1957 was produced and marked in evidence at Exh.28. The First Appellate Court has elaborately discussed this aspect of the matter in paragraph 14 of the impugned judgment. The Appellant had set up a

counter claim that he (1) had purchased the land from the brothers and the widowed mother of the Plaintiff - Respondent and in the alternative (2) was in adverse possession. The defence both in regard to the purchase and adverse possession has been negatived on the basis of evidence. At the hearing of this Second Appeal, it was sought to be submitted that the notice terminating the tenancy did not comply with the requirement of Section 116 of the Transfer of Property Act, 1882. This point has not been urged either before the Learned Trial Judge or in the First Appellate Court. Since I have already noted earlier that the defence of the Appellant was based on the tenancy and in the counter claim on the oral sale or in the alternative on adverse possession. In the circumstances, the Second Appeal does not raise any substantial question of law and is accordingly dismissed.